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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,962	01/21/2004	Hironobu Takizawa	17378	3889
23389 7590 09/26/2007 SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530			EXAMINER TOWA, RENE T	
			ART UNIT 3736	PAPER NUMBER
			MAIL DATE 09/26/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/761,962

Applicant(s)

TAKIZAWA ET AL.

Examiner

Rene Towa

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-5, 10, 11 and 13-43 is/are pending in the application.
- 4a) Of the above claim(s) 3, 11, 13-28, 30 and 32-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2, 4, 5, 10, 29 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/21/07.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This Office action is responsive to an amendment filed July 23, 2007. Claims 2-5, 10-11 and 13-43 are pending. Claims 3, 11, 13-28, 30, 32-43 are withdrawn. Claims 4 and 10 have been amended. Claims 1, 6-9 and 12 have been cancelled. No new claim has been added.

#### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. **Claim 2** is rejected under 35 U.S.C. 102(b) as being anticipated by Akczinski, Sr. (US 4,105,239).

4. Akczinski, Sr discloses a retrieval device 10 comprising a catch unit 28 capable of catching a medical capsule discharged from within a human body, the catch unit having a magnet 28 capable of magnetically attracting a magnet in the medical capsule (see abstract; see figs. 1-6).

5. **Claim 2** is rejected under 35 U.S.C. 102(b) as being anticipated by Nicholson et al. (US 6,325,433).

Nicholson et al. disclose a retrieval device 10 comprising a catch unit 140 capable of catching a medical capsule discharged from within a human body, the catch unit having a magnet 140 capable of magnetically attracting a magnet in the medical capsule (see abstract; see figs. 1-2 & 12).

#### ***Claim Rejections - 35 USC § 103***

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6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. **Claim 10** is rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholson et al. ('433) in view of Slover et al. (US Patent No. 4,445,525).

Nicholson et al. disclose a system, as described above, that teaches all the limitations of the claim except for a bag to enclose the object together with a unit of the retrieval device.

However, Slover et al. disclose a device comprising a bag to enclose an object together with a catch unit of the object retrieval device for temporary storage or transport, after the object has been collected (see column 4/lines 21-25).

Since Nicholson et al. teach a cover 20 to cover the catch unit of the retrieval device (see abstract) and Slover teaches a device comprising a bag to store the catch unit of the retrieval device, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a system similar to that of Nicholson et al. with a bag similar to that of Slover et al. in order to store the catch unit of the retrieval device (see Slover et al., column 4/lines 21-25).

8. **Claims 2 & 4-5** are rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman (US Patent No. 3,540,433) in view of Wilson, Sr. (US 3,822,419).

In regards to **claim 2**, Brockman discloses a medical retrieval device 20 comprising a catch unit 24 capable of catching the medical capsule discharged from a human body (see figs. 1-5; col. 3, lines 1-5, 7-13 & 15-22; col. 5, lines 48-67).

In regards to **claim 4**, Brockman discloses a medical capsule retrieval device 20 wherein the catch unit 24 is a net 36 capable of retrieving or catching the medical capsule (see figs. 1-5; col. 3, lines 1-5, 7-13 & 15-22; col. 5, lines 48-67).

Brockman discloses a device, as described above, that fails to explicitly teach a magnet for magnetically attracting a magnetic material.

However, Wilson, Sr. discloses a device comprising catch unit for urines wherein the catch unit may include magnetic fasteners for fastening the catch unit to the toilet bowl or seat (see abstract; see figs. 1-2; col. 3, lines 9-23).

In regards to **claims 2 & 5**, since Brockman teaches a catch unit comprising a fastening means for fastening the catch unit to a toilet bowl or seat (see col. 4, lines 39-55) and Wilson, Sr. teaches magnetic fasteners the catch unit to the toilet bowl or seat, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a device similar to that of Brockman with magnetic fastening means having a magnet similar to that of Wilson, Sr. in order to fasten the catch unit to the toilet bowl or seat.

9. **Claim 10** is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman ('433) in view of Wilson, Sr. ('419) further in view of Slover et al. (US 4,445,235).

Brockman as modified by Wilson, Sr. discloses a system, as described above, that teaches all the limitations of the claim except for a bag to enclose the specimen together with a unit of the specimen retrieval device.

However, Slover et al. disclose a device comprising a bag to enclose a specimen together with a catch unit of the specimen retrieval device for temporary storage or transport, after the specimen has been collected (see column 4/lines 21-25).

Since Brockman teaches a sample retrieval device comprising a catch unit and Slover et al. teach a bag for storing a catch unit of the specimen retrieval device for temporary storage or transport, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a device similar to that of Brockman as modified by Wilson, Sr. with a bag similar to that of Slover et al. in order to store and/or transport the collected specimen (see Slover et al., column 4/lines 21-25).

10. **Claims 2 & 4-5** are rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman (US Patent No. 3,540,433) in view of Gilmer (US 3,484,981).

In regards to **claim 2**, Brockman discloses a medical retrieval device 20 comprising a catch unit 24 capable of catching the medical capsule discharged from a human body (see figs. 1-5; col. 3, lines 1-5, 7-13 & 15-22; col. 5, lines 48-67).

In regards to **claim 4**, Brockman discloses a medical capsule retrieval device 20 wherein the catch unit 24 is a net 36 capable of retrieving or catching the medical capsule (see figs. 1-5; col. 3, lines 1-5, 7-13 & 15-22; col. 5, lines 48-67).

Brockman discloses a device, as described above, that fails to explicitly teach a magnet for magnetically attracting a magnetic material.

However, Gilmer discloses retrieving device comprising a catch unit comprising a net (22, 24, 37); wherein the catch unit comprises magnets 15 for magnetically attracting a magnetic material (see figs. 3-4).

In regards to **claims 2 & 5**, since both Brockman and Gilmer teach catch unit comprising a net, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a device similar to that of Brockman with a magnet similar to that of Gilmer in order to provide a catch unit that collapses for storage and expands during use.

11. **Claim 10** is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman ('433) in view of Gilmer ('981) further in view of Slover et al. (US 4,445,235).

Brockman as modified by Gilmer discloses a system, as described above, that teaches all the limitations of the claim except for a bag to enclose the specimen together with a unit of the specimen retrieval device.

However, Slover et al. disclose a device comprising a bag to enclose a specimen together with a catch unit of the specimen retrieval device for temporary storage or transport, after the specimen has been collected (see column 4/lines 21-25).

Since Brockman teaches a sample retrieval device comprising a catch unit and Slover et al. teach a bag for a storing a catch unit of the specimen retrieval device for temporary storage or transport, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a device similar to that of Brockman as modified by Gilmer with a bag similar to that of Slover et al. in order to store and/or transport the collected specimen (see Slover et al., column 4/lines 21-25).

12. **Claims 29 and 31** are rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall (US Patent No. 6,632,175) in view of Brockman ('433).

In regards to **claim 29**, Marshall teaches a retrieval method for retrieving a medical capsule, comprising a step of catching the medical capsule discharged from within the human body (see fig. 2; column 3/lines 58-63) except except for an explicit teaching of a step for catching the medical capsule with a catch unit.

However, Brockman discloses a method for retrieving and catching intestinal parasites using a feces strainer 20 including a catch unit 24 upon exiting the intestine through the rectum (see figs. 1-5; col. 3, lines 1-5, 7-13 & 15-22; col. 5, lines 48-67).

Since Marshall teaches a method for retrieving a medical capsule upon exiting the intestine through the rectum (i.e. via excrement) (see fig. 2; column 1/lines 44-46; column 3/lines 58-63) and Brockman discloses a method for retrieving and catching small intestinal parasites upon exiting the intestine through the rectum (see figs. 1-5; col. 3, lines 1-5, 7-13 & 15-22; col. 5, lines 48-67), it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to modify a method similar to that of Marshall to include a catching step similar to that of Brockman in order to provide a convenient and reliable means for the collection of intestinal discharge for diagnostic purposes (see Brockman, col. 5, lines 48-67).

In regards to **claim 31**, Marshall as modified by Brockman, above, discloses a retrieval method for retrieving a medical capsule, as described above, that teaches all the limitations of claim except for an explicit teaching of the step of washing the medical capsule.

However, the Examiner takes official notice that since Marshall teaches a method wherein a reusable medical capsule is retrieved after discharge from a human body, the



method inherently includes the step of washing the medical capsule with a washing unit since the steps of Marshall require, inter alia, swallowing the capsule "through the mouth" and discharging the capsule "through the rectum" (See Marshall, fig. 2; column 1/lines 44-46; column 3/lines 58-63).

As such, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a method similar to that of Marshall as modified by Brockman, above, with a washing step, as claimed, in order to more explicitly disclose the sanitary condition of the capsule at the time of swallowing.

### ***Response to Arguments***

13. Applicant's arguments filed July 23, 2007 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***


14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rene Towa whose telephone number is (571) 272-8758. The examiner can normally be reached on M-F, 8:00-16:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/RTT/

  
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